

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

TRANSITO TRUJILLO,

Plaintiff,

vs.

No. CIV 02-1146 JB/LFG

BOARD OF EDUCATION OF THE
ALBUQUERQUE PUBLIC SCHOOLS,
JOSEPH VIGIL and SUSIE PECK, Albuquerque
Public Schools Superintendents individually and
in their official capacities; ANTHONY GRIEGO,
Principal, Valley High School, individually and in
his official capacity; BRUCE SMITH, Valley High
School Assistant Principal, individually and in his
official capacity; RONALD WILLIAMS, Director
of Certified Staffing, Albuquerque Public Schools,
individually and in his official capacity; and MARK
MAYERSTEIN, Valley High School employee,
individually and in his official capacity,

Defendants.

and

TRANSITO TRUJILLO,

Plaintiff,

vs.

No. CIV 03-1185 JB/LFG

BOARD OF EDUCATION OF THE
ALBUQUERQUE PUBLIC SCHOOLS;
MARK MAYERSTEIN, Senior ROTC
Instructor, and ANTHONY GRIEGO,
Valley High School Principal, in their
official and Individual capacities,

Defendants.

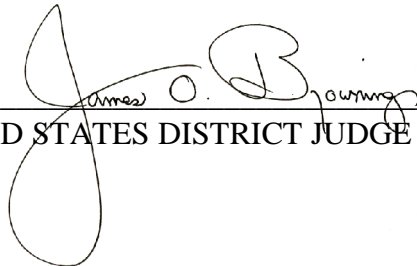
MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiff Transito Trujillo's Pro Se Plaintiff's Reply, and Motion and Brief to Strike Defendants' Response Filed Before U.S. Magistrate Scott, Filed March 17, 2004, filed March 29, 2004 (Doc. 119). The Court will deny Plaintiff Transito Trujillo's motion.

On March 3, 2004, Trujillo filed a Motion and Brief for Partial Summary Judgment Against APS Defendants as to Count I and for Declaratory Relief in case No. Civ. 03-1185. See Doc. 19. On March 11, 2004, the Honorable Judge Robert H. Scott, United States District Court Magistrate Judge, granted the Defendants' motion to consolidate Nos. Civ 02-1146 and Civ. 03-1185. See Order, filed March 11, 2004, at 1 (Doc. 115). According to Trujillo, on March 17, 2004, the Defendants incorrectly filed their response to his motion for partial summary judgment in case No. Civ. 03-1185. Trujillo maintains that, because they filed a response under 03-1185 after it was consolidated with 02-1146, Trujillo's "motion for partial summary judgment stands unopposed by Defendants and [Trujillo's] summary judgment motion should be granted." Pro Se Plaintiff's Reply, and Motion and Brief to Strike Defendants' Response Filed Before U.S. Magistrate Scott, Filed March 17, 2004, at 1.

The Defendants' response brief, however, appears as document number 118 in this matter, 02-1146. Thus, the Defendants' timely filed a response to Trujillo's motion for partial summary judgment. Accordingly, Trujillo's motion, insofar as it is a motion to strike the Defendants' response, is denied.

IT IS ORDERED that Transito Trujillo's Pro Se Plaintiff's Reply, and Motion and Brief to Strike Defendants' Response Filed Before U.S. Magistrate Scott, Filed March 17, 2004 is denied.



UNITED STATES DISTRICT JUDGE

Transito Trujillo
Albuquerque, New Mexico

Pro se Plaintiff

Max J. Madrid
Alex C. Walker
Modrall, Sperling, Roehl, Harris & Sisk
Albuquerque, New Mexico

*Attorneys for Defendants Board of Education,
Albuquerque Public Schools; Joseph Vigil;
Susie Peck; Anthony Griego; Bruce Smith;
and Ronald Williams*

Richard L. Alvidrez
Sean Olivas
Keleher & McLeod
Albuquerque, New Mexico

Attorneys for Defendant Mark Mayerstein